PADIBERAS NASIONAL BHD A

v.

ZAINON AHMAD & ORS

COURT OF APPEAL, PUTRAJAYA B
RAMLY ALI JCA
SYED AHMAD HELMY JCA
CLEMENT SKINNER JCA
[CIVIL APPEAL NO: B-02-374-2008]
9 FEBRUARY 2011 C

LABOUR LAW: *Employment - Termination - Mutual termination pursuant to acceptance of Voluntary Separation Scheme package (VSS) - Employees claiming retirement/termination benefits after accepting VSS - Whether employees entitled to be paid benefits as per employment handbook - Whether respondents expressly waived rights to receive retirement/ termination benefits when accepting VSS* D

The respondents (691 of them) were former employees of the appellant who had opted for a Voluntary Separation Scheme (VSS) offered by the appellant in 2003. Nearly two years after the respondents had ceased employment with the appellant, the respondents wrote to the appellant requesting for their retirement/ termination benefits under cl. 5.5 of the appellant's employment handbook ('handbook'). The appellant did not agree to their request and the respondents filed the instant suit against the appellant. The trial judge found for the respondents and ordered the appellant to pay the respondents who had obtained the retirement age of 55, their retirement/termination benefits with interest. The appellant now appealed. E F G

The respondents' contended that the retirement/termination benefits under cl. 5.5 could still be paid notwithstanding the mutual termination of their contracts of employment because (1) under their original contracts of employment, if their employment was terminated for reasons other than compulsory retirement, optional retirement, death or disability, they would be paid the retirement/termination benefits as stated in the handbook and therefore as the mutual termination of their service under the VSS was a termination of their original contracts of employment for reasons other than compulsory retirement *etc.*, they should be H I

entitled to be paid the said benefits, and (2) the respondents did not expressly waive their rights to receive the retirement/termination benefits when accepting the VSS, unlike the other employees who had accepted a waiver clause in a subsequent VSS offered by the appellant in 2007.

Held (allowing the appeal)
Per Clement Skinner JCA delivering the judgment of the court:

(1) The respondents would have known that the VSS was a comprehensive package. They would have known what retirement/termination benefits and compensation they would be paid or receive under the VSS upon termination of their service. The respondents would have been in a position to compare and to realise that the compensation they would receive under the VSS for termination of their service did not include what they would receive under cl. 5.5 of the handbook if they chose to continue in the service of the appellant. In the circumstances, there was no necessity to insert an express waiver clause regarding cl. 5.5 of the handbook. (para 17)

(2) The respondents were given an option of either accepting the termination of their services on the terms as stated in the VSS, or continuing in the employment of the appellant. The respondents chose the VSS voluntarily with their eyes open which brought about a complete cessation of their employment with the appellant upon them being paid the benefits stated in the VSS package. It would be wrong to allow the respondents to agitate again for benefits which were not included in the package, benefits which would only be paid to them if they continued in the service of the appellants but which they gave up by opting to leave. If they were allowed to do so, it would frustrate the whole purpose of introducing the VSS. (para 18)

(3) The mutual termination of the respondents' original contracts of employment by the VSS brought about a complete rescission of the respondent's original contracts of employment and along with it cl. 5.5 of the handbook. Although it was not expressly stated that the VSS would extinguish the rights and

obligations under the original contracts of employment upon mutual termination, the new agreement constituted by the VSS clearly revealed an intention to rescind the respondent's original employment contracts. The VSS sought to bring about a complete cessation of the employer/employee relationship between the appellant and the respondents. The original contract need not be performed as provided in s. 63 of the Contracts Act 1950. (paras 21, 22 & 23)

(4) There was no merit in the respondents' contention that they had not given up their rights under cl. 5.5 of the handbook by a voluntary, conscious and affirmative act since the acceptance of the VSS would constitute such an act. (para 24)

(5) The trial judge erred in finding that the inclusion of a waiver clause in the subsequent VSS offered to other employees in 2007 amounted to an admission by the appellant of the respondents' claim in the instant suit. The inclusion of the clause in the VSS 2007 could not be regarded as an admission by the appellant of the respondents' claim. The inclusion, as explained by the appellant, was in reaction to the instant suit and such inclusion was consistent with the stand taken by the appellant that the respondents were not entitled to retirement/termination benefits. The inclusion of the waiver clause was done in abundance of caution. (para 25)

Bahasa Malaysia *Translation Of Headnotes*

Responden-responden (691 semuanya) adalah bekas pekerja perayu yang memilih Voluntary Separation Scheme (VSS) seperti yang ditawarkan oleh perayu pada tahun 2003. Hampir dua tahun selepas responden-responden berhenti bekerja dengan perayu, responden-responden menulis kepada perayu menuntut manfaat-manfaat penamatan/persaraan mereka di bawah fasal 5.5 buku panduan pekerjaan perayu ('buku panduan'). Perayu tidak bersetuju dengan permintaan dan responden-responden memfail tindakan semasa terhadap perayu. Hakim bicara memutuskan untuk responden-responden sekaligus memerintahkan perayu membayar responden-responden, yang telah pun mencapai umur persaraan 55 tahun, manfaat-manfaat penamatan/persaraan mereka dengan faedah. Perayu kini merayu.

Responden-responden menegaskan bahawa manfaat-manfaat penamatan/persaraan di bawah fasal 5.5 masih boleh dibayar walaupun terdapat penamatan mutual kontrak pekerjaan mereka kerana (1) di bawah kontrak pekerjaaan asal mereka, jika pekerjaan mereka ditamatkan atas alasan selain dari persaraan wajib, persaraan opsyen, kematian atau kecacatan, mereka akan dibayar manfaat penamatan/persaraan seperti yang dinyatakan dalam buku panduan, dan oleh itu, oleh kerana pemberhentian secara mutual perkhidmatan mereka di bawah VSS merupakan penamatan kontrak pekerjaan asal mereka atas alasan selain dari persaraan wajib dll, maka mereka adalah berhak dibayar manfaat-manfaat tersebut; dan (2) responden-responden tidak melepaskan hak-hak mereka untuk menerima manfaat-manfaat penamatan/persaraan bilamana menerima VSS, tidak sepertimana lain-lain pekerja yang telah menerima fasal pelepasan di dalam VSS terkemudian yang ditawarkan oleh perayu pada tahun 2007.

Diputuskan (membenarkan rayuan)
Oleh Clement Skinner HMR menyampaikan penghakiman mahkamah:

(1) Responden-responden seharusnya mengetahui bahawa VSS adalah suatu pakej yang komprehensif. Mereka seharusnya mengetahui apa manfaat penamatan/persaraan dan pampasan yang akan dibayar dan diterima oleh mereka di bawah VSS sebaik perkhidmatan mereka ditamatkan. Responden-responden berada dalam kedudukan untuk membanding dan menyedari bahawa pampasan yang akan mereka terima di bawah VSS bagi penamatan perkhidmatan mereka tidak merangkumi apa yang akan mereka terima di bawah fasal 5.5 buku panduan jika mereka memilih untuk terus berada dalam perkhidmatan perayu. Oleh itu, tiada keperluan untuk memasukkan suatu fasal pelepasan ekspres mengenai fasal 5.5 buku panduan.

(2) Responden-responden diberi opsyen sama ada untuk menerima penamatan kerja mereka atas terma-terma seperti yang termaktub di dalam VSS, atau terus bekerja dengan perayu. Responden-responden memilih VSS dengan secara sukarela dan dengan mata terbuka sekaligus membawa kepada penamatan sepenuhnya perkhidmatan mereka dengan perayu sebaik sahaja dibayar manfaat-manfaat seperti yang tercatat di dalam pakej VSS. Adalah salah untuk membenarkan

responden-responden untuk menuntut semula manfaat-manfaat yang tidak dimasukkan di dalam pakej, manfaat-manfaat mana hanya akan dibayar kepada mereka jika mereka terus berada di dalam perkhidmatan perayu, yang mana tidak dilakukan oleh mereka apabila memilih opsyen untuk berhenti. Membenarkan mereka berbuat demikian akan mensia-siakan keseluruhan tujuan VSS ditawarkan.

(3) Penamatan kontrak perkhidmatan asal responden-responden secara mutual melalui VSS telah membatalkan keseluruhan kontrak perkhidmatan asal responden-responden, dan bersama-sama itu, fasal 5.5 buku panduan. Walaupun ianya tidak dinyatakan secara ekspres bahawa VSS akan menghapuskan hak-hak dan obligasi di bawah kontrak perkhidmatan asal ekoran penamatan secara mutual itu, perjanjian baru di bawah VSS jelas menunjukkan niat untuk membatalkan kontrak perkhidmatan responden-responden. VSS berhasrat untuk mengakhiri sepenuhnya hubungan majikan/pekerja antara perayu dan responden-responden. Seperti yang diperuntukkan oleh s. 63 Akta Kontrak 1950, kontrak asal tidak perlu dilaksanakan.

(4) Tiada merit pada hujah responden-responden bahawa mereka tidak dengan secara rela, sedar dan afirmatif melepaskan hak-hak mereka di bawah fasal 5.5 buku panduan. Penerimaan mereka terhadap VSS menyerlahkan perbuatan yang sedemikian rupa.

(5) Hakim bicara khilaf dalam mendapati bahawa kemasukan fasal pelepasan ke dalam VSS terkemudian yang ditawarkan kepada pekerja-pekerja lain pada tahun 2007 adalah satu pengakuan oleh perayu terhadap tuntutan-tuntutan responden di dalam guaman semasa. Kemasukan fasal berkenaan di dalam VSS 2007 tidak boleh dianggap sebagai satu pengakuan oleh perayu terhadap tuntutan responden-responden. Kemasukan tersebut, seperti yang dijelaskan oleh perayu, adalah sebagai reaksi terhadap guaman semasa, dan kemasukan tersebut adalah konsisten dengan pendirian yang diambil oleh perayu bahawa responden-responden tidak berhak kepada manfaat-manfaat penamatan/persaraan. Kemasukan fasal pelepasan hanya dibuat berlandaskan sikap yang terlalu berhati-hati.

Case(s) referred to:
AK Bindal v. Union of India [2003] 2 LRI 837 ***(refd)***
Masjaya Trading Sdn Bhd v. Kedah Cement Sdn Bhd [2004] 4 CLJ 18 CA ***(refd)***
Pan Ah Ba v. Nanyang Construction Sdn Bhd [1969] 1 LNS 123 FC ***(refd)***
Ramli Shahdan & Anor v. Motor Insurer's Bureau of West Malaysia & Anor [2006] 1 CLJ 224 CA ***(refd)***

Legislation referred to:
Contracts Act 1950, s. 63

For the appellant - Siva Kumar Kanagasabai (R Sharmila with him); M/s Skrine
For the respondents - Sivarasa Rasiah (Moganambaz with him); M/s Daim & Gamany

Reported by Usha Thiagarajah

JUDGMENT

Clement Skinner JCA:

[1] This is an appeal against the decision of the High Court in granting to the respondents/plaintiffs (constituting 691 individuals) who were former employees of the appellant a declaration to the effect that even though the respondents had successfully applied for and accepted a separation package under a Voluntary Separation Scheme offered by the appellant in 2003, the respondents were still entitled to receive retirement/termination benefits pursuant to cl. 7.3 of the "Terma dan Syarat Perkhidmatan Kumpulan Eksekutif" and the "Terma dan Syarat Perkhidmatan Kumpulan Bukan Eksekutif" as well as under cl. 5.5 of the "Buku Panduan Kumpulan Eksekutif" and the "Buku Panduan Kumpulan Bukan Eksekutif", both of which clauses appear in the appellant's handbook.

[2] The High Court also ordered that the appellant pay directly to those of the respondents who have obtained the retirement age of 55 at the date of the order, their retirement/termination benefits together with interest at 8% per annum.

The Background Facts

[3] The appellant was formerly known as Lembaga Padi dan Beras Negara ('LPN') a body corporate established pursuant to the Lembaga Padi dan Beras Negara Act 1971. In line with the exercise to corporatize LPN, on 14 May 1994 the Ministry of Agriculture made an offer to all LPN employees to join the appellant as permanent staff with effect from 1 July 1994. The respondents accepted the offer of the appellant.

[4] At the material time cl. 7 of the 'Terma dan Syarat Perkhidmatan Kumpulan Eksekutif' then in force provided five specific instances which entitled employees to payment of "Faedah Penamatan Perkhidmatan" or "Termination of Employment Benefits". For purposes of this case cl. 7.3 is relevant. Under that clause an employee was entitled to termination benefits when terminated from employment before attaining the age of fifty-five due to reasons other than that of compulsory retirement, optional retirement, death or a disability but subject to the following:

(i) If the service of employment is terminated within less than a year from the date of appointment, the employee will not be entitled to the termination benefits;

(ii) In instances where the termination of service is due to reasons other than that of compulsory retirement, optional retirement, death or a disability, the said termination benefits will not be handed to the officer concerned but instead transferred into the Employees Provident Fund as stipulated by the Income Tax Department.

The same terms stated above were also provided for non-Executive employees of the appellant.

[5] On 12 January 1996 LPN, then known as BERNAS was privatized. After privatization the appellant standardized its terms and conditions of employment to include both the previous and new employees of the appellant. The new standardized terms and conditions were issued in appellant's "Buku Panduan Kumpulan Eksekutif" and the "Buku Panduan Kumpulan Bukan Eksekutif" ("the Buku Panduan") which superseded the earlier handbook.

[6] After standardization the material terms and conditions relating to termination benefits were the same as that in the contract of service that was in place in 1994. Clause 7.3 of the Terma dan Syarat Perkhidmatan are now contained in cl. 5.5(a) of the new Buku Panduan which states as follows:

> A permanent officer of BERNAS who is confirmed in his appointment and who is terminated from service with BERNAS before attaining compulsory retirement age for reasons other than Compulsory Retirement, Optional Retirement, Death or Disability will be paid termination benefits as follows:
>
> F x Last drawn Basic Monthly salary x Years of Service with BERNAS.
>
> The F factor is 1.5 for those employees below 10 years of service and 2 for those above 10 years of service.

In 2000 the appellant began to restructure and began offering its employees a voluntary separation scheme. In or about 12 September 2003 the appellant invited applications from its employees to leave their employment under a Voluntary Separation Scheme ("VSS") under a circular dated 12 September 2003 ("the Circular"), which was open to all employees of the appellant.

[7] Under the VSS, the Circular *inter alia* stated that the successful applicant would be subject to the following terms:

(a) The last date of employment will be 31 December 2003.

(b) The successful applicant would receive the following package:

(i) A basic compensation package upon termination of employment (ranging from 23 months to 35 months basic salary or the number of months until retirement, whichever is lesser);

(ii) For those who joined appellant from LPN, an additional *ex-gratia* compensation ranging from 0.5 months to 3 months last drawn salary for each year of service;

(iii) Salary *in lieu* of notice;

(iv) Medical benefits for a period of one year after termination.

[8] The respondents applied for the VSS (in standard application forms) and were successful in their application. The appellant informed the respondents (in standard letters) that the payment of the VSS package would be made on or before 31 December 2003.

[9] By letter dated 12 December 2005, nearly two years after the respondents had ceased employment with the appellant, they wrote to the appellant asking to be paid their "retirement benefits" under cl. 5.5(a) of the Buku Panduan.

[10] When the appellant did not agree to the respondents' request the latter filed this suit and obtained the orders earlier mentioned. Hence this appeal.

[11] One other factor should be mentioned here. In the year 2007 the appellant embarked on another VSS exercise ("VSS 2007") under Circular No. 1 of 2007 dated 28 February 2007 ("the 2007 circular"). In the 2007 circular as well as the letters applying for VSS 2007, it is expressly stated that the acceptance of the VSS will constitute a waiver by the employees of all their rights to the terms and conditions of service in the "Buku Panduan Kumpulan Eksekutif/Bukan Eksekutif BERNAS dan pekeliling-pekeliling".

The High Court Judgment

[12] The learned judge of the High court granted the orders sought by the respondents on the following grounds:

(a) In 2007 when the appellant undertook the VSS exercise, the inclusion of a clause in the 2007 circular and letter applying for VSS which stated that the acceptance of the VSS will result in a waiver by the employee of all their rights under the Buku Panduan, amounted to an admission that the appellant accepted the respondents' claim. The learned judge further held that if such a clause was included in the VSS in 2003, the respondents would surely not have decided to accept the VSS at that time and would have instead chosen to continue to work for the appellant.

(b) The VSS which was conducted in 2003 did not terminate the rights of the respondent nor prohibit them from their rights under cl. 5.5 and 7.3 of the handbook. There was also no mention of any amendment to the terms of employment.

(c) In the present case, the original contracts by the respondents were never terminated nor cancelled by the respondents nor appellant.

This Appeal

[13] The appellant complains that the learned judge erred in law in arriving at each of her findings above.

[14] Reading the judgment of the learned judge as a whole, it is clear to us that she had formed the view that even though the respondents had agreed to a mutual termination of their employment contracts with the appellants, the respondents rights to be paid retirement/or termination benefits under cl. 5.5 or 7 of the Buku Panduan remained intact as they had never been waived.

[15] The learned judge came to that decision as it was the respondents' contention in the court below and before us as well, that the termination benefits under cl. 5.5 could still be paid to the respondents notwithstanding the mutual termination for two main reasons:

(a) under their former contracts of employment, if their employment was terminated for reasons other than compulsory retirement, optional retirement, death or disability, they would be paid the retirement or termination benefits stated in the Buku Panduan. It was contended by the respondents that the mutual termination of their service under the VSS was a termination of their contracts of employment for reasons other than compulsory retirement etc and therefore they were entitled to be paid the termination benefits pursuant to cl. 5.5;

(b) The respondents had not expressly waived their rights to receive the retirement or termination benefits when accepting the VSS, unlike those other employees under the VSS 2007.

[16] In our judgment the learned judge erred in law in coming to her decision for the following reasons.

[17] The respondents' contention in (a) above is untenable because even though their acceptance of the VSS would result in a termination of their service for reasons other than compulsory retirement etc, yet the termination under the VSS was a

termination upon mutually agreed terms which did not include the benefits payable under cl. 5.5. Under the VSS the respondents were offered the separation package referred to earlier in this judgment. The respondents would have seen and known that the package was a comprehensive package of what they would receive if they accepted the VSS. The respondents would have known what retirement or termination benefits and compensation they would be paid or receive upon termination of their service under the VSS. The respondents would have been in a position to compare and to realize that the compensation they would receive under the VSS for termination of their service did not include what they would receive under cl. 5.5 of the Buku Panduan if they chose to continue in the service of the appellant. In the circumstances, in our view, there was no necessity to insert an express waiver clause regarding cl. 5.5 of the Buku Panduan.

[18] The respondents were given an option of accepting the termination of their services on the terms stated in the VSS and leaving with only those benefits stated in the package offered or they could continue in the employment of the appellant. The respondents, with eyes open voluntarily chose the VSS which brought about a complete cessation of their employment with the appellant upon their being paid the benefits stated in the package. It would be wrong to allow the respondents to again agitate for benefits which were not included in the package; benefits which would only be paid to them if they continued in the service of the appellants, but which they gave up by opting to leave. If they are allowed to do so it would frustrate the whole purpose of introducing the VSS. In this regard we agree with what was said by the Indian Supreme Court in *AK Bindal v. Union of India* [2003] 2 LRI 837 about the purpose and nature of a Voluntary Separation Scheme (VSS). Although the facts in that case are different, the principle of what is stated there is relevant:

> The Voluntary Retirement Scheme (VRS) which is sometimes called Voluntary Separation Scheme (VSS) is introduced by companies and industrial establishments in order to reduce the surplus staff and to bring in financial efficiency …
>
> … a considerable amount is to be paid to an employee *ex-gratia* besides the termination benefits in case he opts for voluntary retirement under the scheme and his option is accepted. The amount is paid not for doing any work or rendering any service. It is paid *in lieu* of the employee himself leaving the services of

A the company of the industrial establishment and forgoing all his claims or rights in the same. It is a package deal of give and take. That is why in the business world, it is known as 'Golden Handshake'. The main purpose of paying this amount is to bring about a complete cessation of the jural relationship between the
B employer and the employee. After the amount is paid and the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is
C still permitted to raise a grievance enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the whole purpose of introducing the scheme would be frustrated.

D **[19]** With regard to the respondents' contention in (b) above, it was and is the case of the appellant that the mutual termination of the respondents' former employment contracts by the VSS brought about a complete rescission of those contracts, extinguishing all rights and obligations there under even though the
E VSS did not provide an express term to do so. According to the appellant by entering into the VSS they were relieved from performing the respondents former employment contracts as the provisions of s. 63 of the Contracts Act 1950 were attracted which reads "if parties to a contract agree to substitute a new
F contract for it, or to rescind, or alter it, the original contract need not be performed".

[20] The respondents counter-argued that their former contracts of employment had not been rescinded by the VSS because under s. 63, there must be clear words to show that the parties had
G intended to substitute the rights under the old contract with the new contract but here there was no explicit waiver of the respondents' rights under cl. 5.5. According to the respondents "for a rescission of this obligation, there must be an explicit waiver of this right ..." (see para 5.3 of respondents' written submission).
H In support the respondents rely on the Federal Court case of *Pan Ah Ba & Anor v. Nanyang Construction Sdn Bhd* [1969] 1 LNS 123 a case concerning s. 63 of the Contracts Act where Lord President Azmi said that in order to constitute a dispensation of a promise neither consideration nor an agreement is necessary

I

"provided of course it is clear from the evidence that the promisee had so dispensed with the performance of the promise by a voluntary conscious act and it must be an affirmative act on his part", which according to the respondents was absent in this case, unlike in the case of the employees under the VSS 2007 who voluntarily, consciously and affirmatively waived their rights to termination benefits.

[21] We do not agree with the respondents contentions. In our judgment the mutual termination of the respondents' former contracts of employment by the VSS brought about a complete rescission of the respondents' former contracts of employment and along with it cl. 5.5.

[22] Although it was not expressly stated that the VSS would extinguish the rights and obligations under the contracts of employment upon mutual termination, it is our view that the rescission resulted in the extinguishment of rights under the former contracts of employment. In *United Dominion Corp (Jamaica) Ltd v. Michael Miri Shouciar*, Lord Devlin said that "if the new agreement reveals an intention to rescind the old, the old goes, and if it does not, the old remains in force and unamended". What was said above was approved by the Court of Appeal in *Ramli Shahdan & Anor v. Motor Insurer's Bureau of West Malaysia & Anor* [2006] 1 CLJ 224.

[23] In our judgment the new agreement constituted by the VSS clearly revealed an intention to rescind the respondents' employment contracts. The VSS sought to bring about a complete cessation of the employer/employee relationship between the appellant. The respondents would be paid the amounts offered in the VSS package on 31 December 2003, the date when their employment would cease. The VSS package offered to the respondents consisted of the various termination benefits mentioned earlier. Since the respondents who agreed to accept the package would cease employment, it could not have been intended by the parties that the payment of the amounts under the package deal offered to the respondents was to pay them for doing any work or rendering any service but, as stated in *AK Brindal*, it was paid in lieu of the respondents themselves leaving the services of the appellant and forgoing all their claims or rights in the appellant, claims and rights which were contained in their

former employment contracts. In other words, a complete rescission of their old employment contracts, by reason whereof the original contract need not be performed as provided in s. 63 of the Contracts Acts.

[24] With regard to the respondents' contention that they had not given up their rights under cl. 5.5 by a voluntary, conscious and affirmative act, we find no merit in this contention. The acceptance of the VSS package would in our view, constitute such act.

[25] With regard to the learned judge's finding that the inclusion of a waiver clause in the VSS 2007 exercise amounted to an admission by the appellant of the respondents' claims in this suit, we find the learned judge erred in law in doing so. While it is permissible to take into account the conduct of the contracting parties between each other to ascertain the terms of the contract as a form of estoppel by convention (see *Masjaya Trading Sdn. Bhd v. Kedah Cement Sdn. Bhd* [2004] 4 CLJ 18), this was not the case here. Further, in our view, the inclusion of the waiver clause in the VSS 2007 exercise cannot be regarded as an admission by the appellants of the respondents claim. From the explanation given by the appellant, ie, the inclusion was in reaction to this suit and such inclusion was consistent with the stand taken by the appellant here that the respondents were not entitled to termination benefits; it seems to us that the inclusion of the waiver clause was done in abundance of caution and not as stated by the learned judge.

[26] With regard to the complaint of the appellant that the learned judge erred in finding that there was no termination of the respondents' employment contracts, we see nothing in the point taken. It is clear to us that the learned judge was aware that the VSS resulted in a mutual termination of the respondents employment with the appellant, but it was in the context of whether the respondents' rights to be paid termination benefits under cl. 5.5 of their former contracts of employment still remained intact, that the learned judge said what she said.

[27] With regard to the appellant's complaint that the judgment given by the High Court is a nullity as it is uncertain and or ambiguous, we find no merit in this ground. In the first place it was never raised in the court below and so the appellant cannot

take the point now. In the second place the amounts payable are a matter of arithmetical calculation to be done in accordance with cl. 5.5. The appellant would, if it becomes necessary, have the requisite details such as the duration of employment and the last drawn salary for each of the respondents to make the calculations.

[28] In the result we allow the appeal. We set aside the judgment entered by the High Court.